FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5638 OF 2005

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. Pankaj Das for the petitioner

CORAM: SMT. RANJANA DESAI, J.
30/8/05

P.C.:-

The petitioner is plaintiff in Regular Civil Suit No. 526/04. The said suit is filed against the respondent. It is prayed in the said suit that the judgments in R.C.S. No. 604/81, civil appeal No. 490/85 and writ petition No. 386/90 are not binding on the plaintiff and that possession of the suit premises may not be ordered to be taken away from the plaintiff and given to the respondent.

2. In this suit an application for temporary injunction was filed by the plaintiff which came to be

rejected by the trial court. The plaintiff carried an appeal. In that appeal application for temporary injunction was made. That application was also rejected and hence this writ petition.

3. The learned counsel for the petitioner/plaintiff contended that in earlier suit No. 604/81 which was filed by the respondent against the plaintiff's parents the plaintiff was not a party. The plaintiff was also not a party in Civil Appeal No. 490/85 and Writ Petition No. 386/90 and, therefore, the said judgments are not binding on the plaintiff. The learned counsel pointed out that the plaintiff was residing with her father at the time of his death and, therefore, she must get benefit of Section 5(11)(c) of the Rent Act but as she was not impleaded as party in the suit these facts could not be brought to the notice of the court. In the circumstances, the judgments in R.C.S. No. 604/81, Appeal No. 490/85 and Writ Petition No. 386/90

are not binding on her and, therefore, the courts below ought to have granted injunction.

4. I am not impressed by this submission. Suit No. 604/81 was filed by the respondent against plaintiff's parents for possession on the ground of default in payment of rent. The said suit was decreed against the plaintiff's parents. They carried an appeal being civil appeal No. 490/85. That appeal was dismissed. A writ petition was filed being writ petition No. 386/90. That petition was also dismissed.

5. It is pertinent to note that by order dated 16/6/04 passed in writ petition No.386/90 Justice D. G. Karnik had ordered the heirs of the petitioners therein to file an undertaking on usual terms in the court within a period of four weeks and on that ground time to vacate the suit premises was given. Instead of filing this undertaking the petitioner has filed R.C.S. No. 526/04

contending that the judgment in R.C.S. No. 604/81 and civil appeal No. 490/85 and judgment of this court in writ petition No. 386/90 are not binding on her.

6. If the petitioner was staying with her parents and if at all she had any right or interest in the suit premises, she ought to have made an application to implead her as a party to the suit or to the appeal or in the writ petition. That is not done. Hence temporary injunction has rightly been denied to her. Petition is rejected. However, the lower appellate court will deal with appeal on merits and uninfluenced by my observations.